IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4805 OF 2005.

Rayat Shikshan Sanstha
and another. ... Petitioners.

V/s.

Shri Anil Yashwant Sutar
and others. ... Respondents.

R.V.More for the petitioners.

Sachin Manale for respondent No.1

H.A.Solkar, A.G.P. for respondent Nos.2 and 3.

CORAM : V.C.DAGA, J.

RESERVED ON : 12th December, 2005.

PRONOUNCED ON : 23rd December 2005.

P.C.:

. The petitioner in this petition is challenging the order dated 31st May, 2005 passed by the Director of Education, Higher Education, Maharashtra State, Pune, whereby the claim of the petitioner institution for reimbursement of the salary of respondent No.1 from the date of his appointment till 11th September 2002 came to be rejected.

2. The factual matrix of the case revels that petitioner No.1 is an Education Trust and Society running various schools.

3. According to the petitioners, on 1st October, 1992, respondent No.1 was appointed as Peon on daily wages basis against the reserved post. The respondent No.1, somewhere in the month of September, 1999 requested the petitioner society to make him permanent since there was a permanent vacancy with permanent nature of work. It appears that instead of conceding demand of the employee, his services were orally terminated w.e.f. 14th September, 1999. Consequently, respondent No.1 was required to approach Shivaji University and College Tribunal, Pune ("Tribunal" for short)to challenge the order of his termination resorted to by the petitioner society.

4. The learned Presiding Officer of the Tribunal vide its order dated 30th August, 2001 was pleased to allow the appeal with direction to the petitioner to reinstate respondent No.1 with continuity of service and back wages.

5. Being aggrieved by the judgment and order dated 30th August, 2001 passed by the Presiding Officer of the Tribunal, the petitioner preferred Writ Petition No.5432/2001 before this Court. This Court was pleased to quash and set aside the judgment and order dated 30th August, 2001 passed

by the learned Presiding Officer of the Tribunal and remanded the matter back to the Tribunal for decision afresh on the issue "whether respondent No.1 has worked for more than 240 days in the year".

6. That, after remand, the Presiding Officer of the Tribunal heard both parties He, vide his order dated 29th August, 2002, came to the conclusion that respondent No.1 did complete 240 days in the year. The Tribunal with this finding allowed the appeal and directed reinstatement with continuity of service and backwages observing that since the petitioners have applied for approval and sanction followed by various representations to the State Government which were wrongly rejected by them as true, it was the liability of the State Government to pay the back wages with future wages of respondent no.1. The relevant operative part of the order reads as under:

> "3. The Respondent Nos.1 & 2 are therefore, directed and ordered to immediately issue the reinstatement order to the appellant and they shall also pay, the pay and allowances as per the 4th Pay Commission for the period upto 31.12.1995 and thereafter as per the 5th pay revision from 1.1.1996 upto the date of reinstatement and onwards.
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> 4. The appellant is hereby held entitled to receive all the arrears of his pay and allowances, of course, after

deducting the payment of wages of Rs.35/- per day for those working days, by making the payment of all the remaining working days.

5. The appellant is hereby held entitled to all the benefits of permanency for the purpose of annual increments, salary revisions and pension throughouthis service till either he retires from superannuation or otherwise.

6. The Respondent No.3 shall release the grant to represent the equivalent amount of all the arrears of past salary as well as release such annual grant for future period of the service of the appellant, since the appellant has been held as a permanent full time servant as a Peon.

7. Pursuant to the aforesaid order of the Tribunal dated 29th August, 2002, the petitioners reinstated the respondent No.1, prepared his service book; calculated and quantified his wages amounting to Rs.3,38,279/- and forwarded the salary bills to the State Government to claim reimbursement thereof.

8. The respondent No.1 also preferred Execution Application No.1 of 2003 before the Tribunal to get the order of the Tribunal dated 29th August, 2002 executed.

9. The Tribunal was pleased to issue notices to all the respondents in the execution application.

10. The petitioner- institution appeared in the execution proceeding and filed written statement contending that they have followed the order of the Tribunal. Since respondent No.1 has already been appointed on the post, now, it is for the State Government to discharge their obligation by making payment of backwages and future salary of respondent No.1.

11. It appears that the State Government; after having realised the financial burden flowing from the order of the Tribunal dated 29th August, 2002 extracted hereinabove in para-6 (supra); chose to file Writ Petition No.5955/2003 in this Court to impugn the condition creating financial liability on their head.

12. The present petitioner-society was a party to the aforesaid petition. The present petitioner instead of contesting the petition agreed that the condition put by the Tribunal in para-6 of the operative part of the order dated 29th August, 2002 (extracted in para-6 supra) (which had protected the interest of the petitioners) be quashed and set aside and sought liberty to make representation to the State Government for release

of the grant in aid for making payment of backwages and salary to respondent No.1 as per paras-3 and 4 of the operative part of the order dated 29th August, 2002 and also prayed for opportunity of hearing to convince the State Government as to how they are justified in claiming reimbursement.

13. The learned single Judge of this Court, pursuant to the joint consent terms suggested by the parties to the that petition; to which the present petitioner-society was party; vide his order dated 12th November, 2003 set aside the onerous part of the order dated 29th August, 2002 and allowed the petition by permitting respondent Nos.1 and 2 (petitioners herein) to make representation to the State Government with opportunity of hearing. The State Government was also directed to decide their representation, if any, within two months from the date of filing of the representation.

14. The petitioner- society pursuant to the liberty granted by this Court in Writ Petition No.5955/2003 made representation to the State Government for reimbursement of salary of respondent No.1. The State Government after

hearing the petitioners rejected their representation and refused to reimburse the arrears of salary of respondent No.1 holding that it was a liability of the petitioner- society to pay backwages and future salary.

15. Being aggrieved by the aforesaid decision of the State Government, the petitioner- society has filed the present writ petition under Articles 226 and 227 of the Constitution of India.

16. On being noticed, respondent No.2 and 3 appeared and filed their counter affidavit contending that the Director of High Education after hearing all the parties passed an order dated 31st May, 2004 and approved the post of respondent No.1 with effect from 11th May, 2002; however, rejected the claim of back wages made by the petitioner- society. The Director of Higher Education further held that the appointment of respondent No.1 could be granted grant-in-aid from 11th September, 2002 as per the norms laid down in the Government Resolution dated 3rd October, 1979.

17. The relevant part of the affidavit filed by Mr.Dilip Narayan Patil, Administration Officer (Higher Education), Pune Region, Pune, who has

filed affidavit on behalf of the State, reads stated on oath as under:

> " I say that the salary grant scheme (grant in aid for expenditure on salaries expended in Non Government, Non-Agricultural Colleges of Arts, Commerce, Science) commenced w.e.f. 3.1.1979 as per G.R.No.Education and employment NGC/1279/157796/XXV dt.3.10.1979 and in accordance with the said G.R. and its annexure-A the expenditure on salaries would be held admissible only if it is paid on the approved and sanctioned post. In the present case post in question pertaining to Respondent No.1 Shri Anil Yashwant Sutar was never sanctioned by the Respondent No.2 i.e. Director of Higher Education much less by the State Government. I further submit that the Petitioners Sanstha has not sought any permission nor communicated any such filling of posts/appointment of Respondent No.1 Shri.Anil Yashwant Sutar. I therefore, submit that the claim of back wages of Petitioners upto 10.9.2002 has been rejected on merit.

18. With the aforesaid rival pleadings on record, this petition was heard for admission.

19. Having heard rival parties, no fault can be found with the stand taken by respondent No.3 - State of Maharashtra. If the post was not sanctioned, it was not the obligation of the Stage Government to reimburse the salary of the employee employed by the school or the education institution on that post.

20. At this juncture, it may be relevant to note that when the State Government filed writ petition challenging that part of the order dated 29th August, 2002, whereby the Tribunal had directed the State Government to reimburse all the arrears together with salary of respondent No.1 right from the date of his appointment, the petitioner- society conceded and agreed that onerous part of the order be set aside. By consent of parties the said petition was allowed. This conduct of the petitioner do suggest that the petitioner- society itself was convinced of the fact that the society was not entitled to reimbursement of arrears of salary of respondent No.1 since the post on which he was appointed was not a sanctioned post. With this understanding liberty to make representation to the State Government was sought so as to persuade the State Government to reimburse the arrears of salary.

21. In the above back drop, now it does not lie in the mouth of the petitioner- society to contend that they are, as of right, entitled to reimbursement of the arrears of salary of respondent No.1. The post in question was not sanctioned by the Education Department. The post of respondent No.1 has now been approved and

sanctioned with effect from 11th September, 2002. The petitioner- society, thus, would be entitled to claim reimbursement of salary, or arrears of salary with effect from 11th September, 2002 only. No fault can be found with the view taken by the State Government. The stand taken by the State Government is perfectly justified. The contentions sought to be raised and canvassed by the petitioner- society are contrary to the conduct of the petitioner itself. The petitioner cannot be allowed to have blow hot and cold. The petition is, thus, liable to be dismissed.

22. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)